

Circuit Court for Anne Arundel County
Case No. C-02-FM-21-000605

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1947

September Term, 2023

ROBERT GUYETTE, II

v.

ERIN GUYETTE

Wells, C.J.,
Friedman,
Wilner, Alan M.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: June 10, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to MD. R. 1-104(a)(2)(B).

In this case, we are asked to determine whether the Circuit Court for Anne Arundel County erred in ordering make-up visitation. For the reasons that follow, we affirm the judgment of the circuit court.

BACKGROUND

Appellant, Robert Guyette (“Father”), and appellee, Erin Guyette (“Mother”), are the divorced parents of one minor child, T., who was born in March 2011. The parties have an extensive litigation history over custody of and visitation with T. When T. was born, the parties were residing together in Yuma, Arizona. In 2012, Mother relocated with T. to Maryland to live with her parents. At the time of their divorce in 2013, Father was still residing in Arizona and Mother was residing in Easton, Maryland. Mother was awarded primary physical and sole legal custody of T., with access periods awarded to Father.

In Fall 2014, Father, an active-duty member of the U.S. Marine Corps, was restationed from Arizona to Maryland and sought modification of custody based on a material change in circumstances. Following a 5-day hearing, the magistrate found that Mother had demonstrated a lack of honesty with her psychiatrist and was unable to be financially independent of her parents. The magistrate also found evidence that Mother had been making unsupported claims that Father abused T. and was encouraging T. to be afraid of Father, potentially causing damage to T.’s mental health. Due to character concerns regarding Mother, the magistrate recommended that Father be awarded primary physical and sole legal custody. The circuit court accepted the magistrate’s findings and recommendations, and in January 2016, modified custody of T. to award Father primary physical and sole legal custody, with Mother to have visitation every other weekend.

In the ensuing years, the parties continued to have a high conflict dynamic. Father was relocated to South Carolina in 2018 and the parties returned to court on cross motions to modify visitation of T. and petitions to hold each other in contempt. Following another 5-day hearing, the magistrate found that there were significant safety concerns when T. was in Mother's care, due primarily to her alcohol abuse and poor decision making. Evidence also showed a pattern of difficulties with Mother's visitation, such as missed visits, late returns, and missing items. In addition, the magistrate found that throughout Mother's interactions with Father, the court system, and the family services professionals involved in the case, Mother had repeatedly made false accusations, filed unfounded complaints, and demonstrated herself to be not reliable or credible. The magistrate also found that Father had added unilateral restrictions to Mother's access to T., exceeding his authority as designated in the custody order. The circuit court adopted the magistrate's findings and issued a new order in 2019 that, among other things, changed Mother's visitation to the second weekend of every month, and imposed conditions on her contact with T., including participation in an alcohol monitoring program.

Following the circuit court's 2019 modification, Father was relocated with his family, including T., to Japan in 2020, and then relocated again in 2022, to Yuma, Arizona where they currently reside.¹ The most recent visitation order was entered by the circuit court on January 30, 2023. In that order, Mother was granted visitation with T. for four consecutive weeks every summer, and for T.'s spring break every year.

¹ Following the parties' divorce, Father remarried and has two additional children.

In the spring of 2023, Mother contacted T.'s school to determine the dates of his spring break to make arrangements for her visitation. The school calendar designated the week of April 3, 2023 as spring break. On March 23, 2023, approximately 10 days prior to start of spring break, Mother notified Father that she would be picking T. up for her visitation on the morning of April 1, 2023. In response, Father informed Mother that he believed she was supposed to give him 30-days' notice before any travel with T., and because she had not done so, he would not make T. available for the visitation. The parties sent numerous emails back and forth, both between each other and involving their attorneys, disputing whether 30-days' notice was required for the spring break visitation. Despite Father informing Mother that he had made plans to travel out of town with T. for spring break, Mother nonetheless flew to Arizona on April 1 and drove to T.'s school to pick him up. T. was not there, however, and Mother was unable to exercise her visitation.

Shortly thereafter, on April 4, 2023, Mother notified Father that she would be exercising her summer visitation. Throughout April and into May, the parties sent contentious emails back and forth regarding Mother's plans to exercise her visitation with T. Although Mother disputed that she was required to send Father her travel itinerary 30 days in advance, she nonetheless provided the flight information in advance, and Father purportedly agreed that he would meet her at the airport with T. at 9 a.m. on May 27, 2023.

On May 1, following Mother's failed spring break visitation and while she and Father were arguing over her upcoming summer visitation, Mother placed a phone call to T.'s school. She spoke with three school employees, including the principal, who reported to Father that Mother sounded heavily intoxicated and had told them that Father was

violating a court order. She also told them that she would be coming to Arizona for her summer visitation with T. and after that she would be taking him to live with her in Maryland permanently. In response, on May 19, 2023, Father filed a petition for an Order of Protection from the Yuma superior court.² Father's petition was granted and the Yuma superior court issued an Order of Protection for Mother to have no contact with either Father or T.

On May 26, when Mother arrived in Arizona, she was served with the order of protection. On May 27, Father did not bring T. to the airport and Mother did not exercise her summer visitation.

On June 15, 2023, Mother filed a petition to hold Father in contempt for intentionally denying her court ordered visitation. Following a hearing, the magistrate found that Father had unjustifiably denied and interfered with Mother's visitation. The magistrate did not recommend that Father be held in contempt, only that make-up time be awarded to Mother and that Father reimburse Mother for her travel expenses. The circuit court accepted the magistrate's findings and ordered that Mother would have additional

² In addition to the phone call to the school, Mother also made four phone calls to Father's employer on May 1 and May 9. The duty clerks who received the calls reported that Mother had sounded intoxicated and made allegations that Father was keeping her from her son and violating a court order. Throughout the parties' involvement, Mother had demonstrated a pattern of contacting Father's employer and making false allegations such that the circuit court had permanently enjoined Mother from making false reports to Father's employer. On May 15, 2023, Father filed a petition in the circuit court to hold Mother in contempt for violating that permanent injunction. Following a hearing on August 22, 2023, Mother was found to be in contempt and was ordered to undergo substance abuse evaluation and pay Father a portion of his attorney fees incurred due to the contempt proceedings. Father's petition for the order of protection from the Yuma superior court also relied partially on Mother's phone calls in violation of the permanent injunction.

visitation over T.'s 2023 Christmas break and an additional four weeks of visitation during the summer of 2024. Father now appeals the circuit court's order granting Mother make-up visitation.

DISCUSSION

For cases involving the custody of children, we review the decision of the circuit court on both the law and evidence, and apply a three-part standard of review to address the findings of fact, conclusions of law, and the overall determination of the court. *In re Yve S.*, 373 Md. 551, 584 (2003). We review the circuit court's factual findings for clear error only. We review the circuit court's legal conclusions without deference. *Id.* And, if the circuit court's ultimate conclusion is "founded upon sound legal principles and based upon factual findings that are not clearly erroneous," we review that decision for an abuse of discretion." *Id.* at 586 (quoting *Davis v. Davis*, 280 Md. 119, 126 (1977)).

I. INTERPRETATION OF CUSTODY AND VISITATION ORDER

In his first issue, Father argues that the circuit court erred in its interpretation of the custody order. Specifically, Father argues that Mother was required to give him 30-days advance notice before any visitation. The circuit court disagreed and so do we.

We interpret the language of a judicial decree, such as the court's visitation order, in similar fashion to interpretation of a contract. *Jones v. Hubbard*, 356 Md. 513, 533-34 (1999). That is, where the language is plain and unambiguous, we interpret that language according to what a reasonable person in the position of the parties or the court would have thought it meant. *Id.* at 534 (citations omitted). Here, there is nothing ambiguous about the wording of the visitation order.

There are three sections that are relevant to the current dispute. First, with regard to the summer and spring break visitation, the order grants Mother access and specifically designates the start and end of the access periods:

ORDERED, that [Mother] shall have summer access ... in Maryland for a four consecutive week period from Friday to Friday each summer to begin on the second Friday of July; and it is further

ORDERED, that [Mother] shall have access ... in Maryland every Spring/Easter break according to [the] school calendar to begin no later than 6:00 p.m. EST on the first day of said break and to end no later than 6:00 p.m. EST on the last day of said break

Neither clause includes a notice requirement for Mother to exercise her visitation.

In contrast, a separate clause grants Mother the option of additional weekend visits during the school year, specifically contingent on giving Father advance notice:

ORDERED, that with thirty (30) days advance written notice, to include written confirmation of her flight itinerary, [Mother] may visit ... for up to one weekend per month during the school year in his hometown from Friday after school until Monday return to school (or Tuesday return to school if there is no school on Monday).

The clauses granting Mother summer and spring break visitation and the clause granting Mother optional monthly visitation contain notably different language. Although the summer and spring visitation clauses include no notice requirement, they do specifically designate the visitation periods such that both parties should be aware of the schedule without needing notice from the other. In contrast, the optional monthly visitation is flexible and not designated for any particular weekend. Thus, advance notice is needed to accommodate Mother's and Father's schedules.

Finally, the order contains a separate clause requiring Mother to provide copies of airline reservations:

ORDERED, that in lieu of direct payment of child support, [Mother] shall pay all costs associated with [T's] transportation for her access in Maryland and all costs associated with her travel to [T.'s] hometown to visit him there. [Mother] shall provide [Father] with copies of all roundtrip airline reservations at least thirty (30) days in advance of said scheduled travel.

Although this clause directs Mother to provide Father with copies of airline reservations 30 days prior to travel, that requirement is separate from the awarded visitation. There is no language connecting it to any of the visitation awards, nor is there any language suggesting that Mother would forfeit her visitation if she failed to meet this requirement. Father strenuously argues that the notice requirement *should* be a prerequisite to exercising visitation and the order's silence makes it ambiguous. We do not consider the complete absence of language to be ambiguous. The language is not there because the consequence Father wants is not part of the circuit court's order.

We conclude, therefore, that the plain language of the circuit court's order is not ambiguous, and it does not include a requirement for Mother to notify Father of her travel itinerary 30 days prior to summer or spring break visitation. The circuit court therefore did not err in its interpretation of the notice provision.

II. UNJUSTIFIABLE DENIAL OF VISITATION

Next, Father argues that the circuit court erred in finding that he had unjustifiably denied Mother access to T. Specifically, Father argues that the order of protection he obtained from the Yuma superior court justified his denial of Mother's summer visitation

with T., and by finding otherwise the circuit court failed to give full faith and credit to the Yuma order under MD. CODE, FAM. LAW (“FL”) § 4-508.1. Father’s reliance on FL § 4-508.1 is, however, misplaced.

Under FL § 4-508.1, Maryland courts give full faith and credit to protective orders issued by another state and shall enforce them to the extent that relief is permitted under Maryland law. FL § 4-508.1(b). But Father is not seeking enforcement of a protective order. Rather, he has offered the Yuma order to the circuit court as evidence to support his position that his actions were justified. Thus, FL § 4-508.1(b) does not apply here.

Whether Father was justified in denying Mother’s scheduled visitation was a fact question for the circuit court to determine. We review the circuit court’s factual findings only to determine whether they were clearly erroneous. *Yve S.*, 373 Md. at 585-86. The Yuma protective order was one piece of evidence. In addition to the order of protection and the factual findings of the magistrate, the circuit court was able to review the extensive record of emails between the parties and Father’s original petition stating his grounds for seeking the order of protection. Moreover, the circuit court was quite familiar with the parties and the case, having issued the very visitation order in dispute. Although Father believes that the circuit court should have given more weight to the Yuma order, how to “weigh the evidence and determine what disposition will best promote the welfare” of T. was a matter left to the discretion of the circuit court. *Burak v. Burak*, 455 Md. 564, 617 (2017) (quoting *Yve S.*, 373 Md. at 585-86). Based on its familiarity with the history of the case and the parties, the circuit court found that Father’s objective was to deny Mother’s court-ordered visitation with T. and Father’s decision to seek the order of protection “absolutely

smack[ed] of gamesmanship” to achieve that goal. After reviewing the evidence as a whole, including the Yuma order, the circuit court found that Father’s efforts to deny Mother’s visitation were unjustified. We see nothing clearly erroneous about that finding.

III. MAKE-UP VISITATION

Finally, Father argues that the circuit court erred in ordering make-up visitation under FL § 9-105 because the requirements of the statute were not met. We disagree.

Under FL § 9-105, a court may order make-up visitation if the “court determines that a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order.” FL § 9-105(1). Father argues that, because he was justified in denying Mother’s scheduled visitation, the circuit court could not order makeup visitation. As justification, Father reiterates that (1) Mother failed to give him 30-days advance notice and (2) he was relying on the existence of the Yuma protective order.

We have already rejected both of those arguments, and Father offers nothing new. Thus, we conclude there was no error in the circuit court’s decision to order make-up visitation.

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**